IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6828 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAM @ DHANO JIVANBHAI VAJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6828 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

The present petition has been filed by the the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by order dated 28/2/2003 passed by the District Magistrate, Bhavnagar and he has been declared as "bootlegger" as well as "Dangerous Person".

2. I have heard learned counsel for the petitioner at length and learned AGP, Mr.Kodekar for the respondents. I have also perused the material on record. Learned counsel for the petitioner has submitted that the detaining authority has passed the impugned detention order relying upon four offences registered against the detenu, out of which first offence is registered under Indian Penal Code and remaining three offences have been registered against the detenu under Bombay Prohibition Act. He has further submitted that last offence has been registered on 15/1/2003 before C-Division Police Station under Bombay Prohibition Act, relying upon which, the detaining authority has passed the impugned detention order on 28/2/2003 and hence, according to the learned counsel for the petitioner detenu, there is a delay of more than one month in passing the order. Learned AGP has fairly admitted the same. In support of the arguments, learned counsel for the petitioner detenu has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

3. It appears that last offence registered against the petitioner on 15/1/2003 and order of detention has been passed on 28/2/3003 and hence, there is a delay of more than one month in passing the order. No affidavit has been filed by the respondents explaining the delay satisfactorily, caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained.

Learned counsel for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 28/2/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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